

Assembly Bill No. 1488

Passed the Assembly September 12, 2007

Chief Clerk of the Assembly

Passed the Senate September 11, 2007

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 44010.5 of, and to amend, repeal, and add Sections 44011 and 44012 of, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1488, Mendoza. Air pollution: smog check program: diesel-powered vehicles.

(1) Existing law establishes a motor vehicle inspection and maintenance program (smog check), administered by the Department of Consumer Affairs and the State Air Resources Board, that provides for the inspection of all motor vehicles, except those specifically exempted from the program, upon registration, biennially upon renewal of registration, upon transfer of ownership, and in certain other circumstances. Existing law also establishes an enhanced motor vehicle inspection and maintenance program (smog check II) in each urbanized area of the state, any part of which is classified by the United States Environmental Protection Agency as a serious, severe, or extreme nonattainment area for specified air contaminants. Existing law also requires the smog tests to include, at minimum, loaded mode dynamometer testing in enhanced areas, and 2-speed testing in all other program areas, and a visual or functional check of emission control devices specified by the department. Existing law exempts diesel-powered vehicles from these requirements, unless the department determines that the inclusion of those vehicles is technologically and economically feasible, and, if the department makes that determination, requires a visual inspection of emission control devices and the diesel-powered vehicle's exhaust emissions, and authorizes the testing of emissions of specified pollutants and the measurement of emissions of smoke or particulates, or both. Violations of smog check requirements are a crime.

This bill would, starting January 1, 2010, include diesel-powered vehicles manufactured after the 1997 model-year that have a gross vehicle weight rating of less than 8,501 pounds in the biennial smog check program, as provided.

The bill would authorize diesel-powered vehicle smog check testing to include on-board diagnostic testing.

Because violations of these requirements would be a crime, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 44010.5 of the Health and Safety Code is amended to read:

44010.5. (a) The department shall implement a program with the capacity to commence, by January 1, 1995, the testing at test-only facilities, in accordance with this chapter, of 15 percent of that portion of the total state vehicle fleet consisting of vehicles subject to inspection each year in the biennial program and that are registered in the enhanced program area, as established pursuant to paragraph (1) of subdivision (a) of Section 44003.

(b) (1) The department shall increase the capacity of the program so that the capacity exists to commence, by January 1, 1996, the testing at test-only facilities of that portion of the state vehicle fleet that is subject to inspection and is registered in the enhanced program area, which is sufficient to meet the emission reduction performance standards established by the Environmental Protection Agency in regulations adopted pursuant to the Clean Air Act Amendments of 1990, taking into account the results of the pilot demonstration program established pursuant to Section 44081.6.

(2) Upon increasing the capacity of the program pursuant to paragraph (1), the department shall afford smog check stations that are licensed and certified pursuant to Sections 44014 and 44014.2 the initial opportunity to perform the required inspections. The department shall adopt, by regulation, the requirements to provide that initial opportunity.

(3) If the department determines that there is an insufficient number of licensed test-only smog check stations operating in an

enhanced area to meet the increased demand for test-only inspections, the department may increase the capacity of the program by utilizing existing contracts.

(c) The program shall utilize the testing procedures described in Section 44012.

(d) Vehicles that are not diesel-powered in the enhanced program area which are not subjected to the program established by this section may be tested at smog check stations licensed pursuant to Section 44014 that use loaded mode dynamometers. Diesel-powered vehicles in the enhanced program area that are not subjected to the program established by this section may be tested at smog check stations licensed pursuant to Section 44014 using appropriate testing procedures as determined by the department.

(e) (1) The department may implement the program established pursuant to subdivision (a) through a network of privately operated test-only facilities established pursuant to contracts to be awarded pursuant to this section.

(2) The initial contracts awarded pursuant to this section shall terminate not later than seven years from the date that the contracts were executed.

(f) No person shall be a contractor of the department for test-only facilities in all air basins, exclusively, where the enhanced program is in effect unless the department determines, after a public hearing, that there is not more than one qualified contractor. The South Coast Air Basin shall have at least two contractors, and the combined enhanced program area that includes Bakersfield, Fresno, and Sacramento shall have at least two contractors. The department may operate test-only facilities on an interim basis while contractors are being sought.

(g) (1) In awarding contracts under this section, the department shall request bids through the issuance of a request for proposal.

(2) The department shall first determine which bidders are qualified, and then award the contract to the qualified bidder, giving priority to the test cost and convenience to motorists.

(3) The department shall provide a contractual preference, as determined by the department, not to exceed 10 percent of the total proposal evaluation score, based on the following factors:

(A) Up to 5 percent to bidders providing firm commitments to employ businesses that are licensed or otherwise substantially participating in the smog check program after January 1, 1994.

(B) Up to 5 percent to bidders based on the extent to which bidders maximize the potential economic benefit of the smog check program on this state over the term of the contract. That potential economic benefit shall include the percentage of work performed by California-based firms, the potential of the total project workforce who will be California residents, and the percentage of subcontracts that will be awarded to California-based firms.

(4) Any contract executed by the department for the operation of a test-only facility shall expressly require compliance with this chapter and any regulations adopted by the department pursuant to this chapter.

(h) The department shall ensure that there is a sufficient number of test-only facilities, and that they are properly located, to ensure reasonable accessibility and convenience to all persons within an enhanced program area, and that the waiting time for consumers is minimized. The department may operate test-only facilities on an interim basis to ensure convenience to consumers. The department shall specify in the request for proposal the minimum number of test-only facilities that are required for the program. Any contracts initially awarded pursuant to this section shall ensure that the contractors are capable of fulfilling the requirements of subdivision (a).

(i) Any data generated at a test-only facility shall be the property of the state, and shall be fully accessible to the department at any time. The department may set contract specifications for the storage of that data in a central data storage system or facility designated by the department.

(j) The department shall ensure an effective transition to the new program by implementing an effective public education program and may specify in the request for proposal a dollar amount that bidders are required to include in their bids for public education activities, to be implemented pursuant to Section 44070.5.

(k) The department shall ensure the effective management of the test-only facilities and shall specify in the request for proposal that a manager be present during all hours of station operation.

(l) The department shall ensure and facilitate the effective transition of employees of businesses that are licensed or otherwise substantially participating in the smog check program and may specify in the request for proposal that test-only facility management be Automotive Service Excellence (ASE) certified, or be certified by a comparable program as determined by the department.

(m) As part of the contracts to be awarded pursuant to subdivision (e), the department may require contractors to perform functions previously undertaken by referee stations throughout the state, as determined by the department, at some or all of the affected stations in enhanced areas, and at additional stations outside enhanced areas only to the extent necessary to provide appropriate access to referee functions.

(n) Notwithstanding any other provision of law, to avoid delays to the program implementation timeline required by this chapter or the Clean Air Act, the Department of General Services, at the request of the department, may exempt contracts awarded pursuant to this section from existing laws, rules, resolutions, or procedures that are otherwise applicable, including, but not limited to, restrictions on awarding contracts for more than three years. The department shall identify any exemptions requested and granted pursuant to this subdivision and report thereon to the Legislature.

(o) The department shall implement the program established in this section only in urbanized areas classified by the Environmental Protection Agency as a serious, severe, or extreme nonattainment area for ozone or a moderate or serious nonattainment area for carbon monoxide with a design value greater than 12.7 ppm, and shall not implement the program in any other area.

(p) If existing smog check stations, in order to participate in the enhanced program, have been required to make additional investments of more than ten thousand dollars (\$10,000), the department shall submit recommendations to the Governor and the Legislature for any appropriate mitigation measures.

SEC. 2. Section 44011 of the Health and Safety Code is amended to read:

44011. (a) All motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for all of the following:

(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle that has been issued a certificate of compliance or noncompliance or a repair cost waiver upon a change of ownership or initial registration in this state during the preceding six months.

(3) Any motor vehicle manufactured prior to the 1976 model-year.

(4) (A) Except as provided in subparagraph (B), any motor vehicle four or less model-years old.

(B) Beginning January 1, 2005, any motor vehicle six or less model-years old, unless the state board finds that providing an exception for these vehicles will prohibit the state from meeting the requirements of Section 176(c) of the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or the state's commitments with respect to the state implementation plan required by the federal Clean Air Act.

(C) Any motor vehicle excepted by this paragraph shall be subject to testing and to certification requirements as determined by the department, if any of the following apply:

(i) The department determines through remote sensing activities or other means that there is a substantial probability that the vehicle has a tampered emission control system or would fail for other cause a smog check test as specified in Section 44012.

(ii) The vehicle was previously registered outside this state and is undergoing initial registration in this state.

(iii) The vehicle is being registered as a specially constructed vehicle.

(iv) The vehicle has been selected for testing pursuant to Section 44014.7 or any other provision of this chapter authorizing out-of-cycle testing.

(5) In addition to the vehicles exempted pursuant to paragraph (4), any motor vehicle or class of motor vehicles exempted pursuant to subdivision (b) of Section 44024.5. It is the intent of the Legislature that the department, pursuant to the authority granted by this paragraph, exempt at least 15 percent of the lowest emitting motor vehicles from the biennial smog check inspection.

(6) Any motor vehicle that the department determines would present prohibitive inspection or repair problems.

(7) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

(c) For purposes of subdivision (a), any collector motor vehicle, as defined in Section 259 of the Vehicle Code, is exempt from those portions of the test required by subdivision (f) of Section 44012 if the collector motor vehicle meets all of the following criteria:

(1) Submission of proof that the motor vehicle is insured as a collector motor vehicle, as shall be required by regulation of the bureau.

(2) The motor vehicle is at least 35 model-years old.

(3) The motor vehicle complies with the exhaust emissions standards for that motor vehicle's class and model-year as prescribed by the department, and the motor vehicle passes a functional inspection of the fuel cap and a visual inspection for liquid fuel leaks.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed.

SEC. 3. Section 44011 is added to the Health and Safety Code, to read:

44011. (a) All motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for the following:

(1) All motorcycles until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles.

(2) All motor vehicles that have been issued a certificate of compliance or noncompliance or a repair cost waiver upon a change of ownership or initial registration in this state during the preceding six months.

(3) All motor vehicles manufactured prior to the 1976 model-year.

(4) (A) Except as provided in subparagraph (B), all motor vehicles four or less model-years old.

(B) Beginning January 1, 2005, all motor vehicles six or less model-years old, unless the state board finds that providing an exception for these vehicles will prohibit the state from meeting the requirements of Section 176(c) of the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or the state's commitments with respect to the state implementation plan required by the federal Clean Air Act.

(C) All motor vehicles excepted by this paragraph shall be subject to testing and to certification requirements as determined by the department, if any of the following apply:

(i) The department determines through remote sensing activities or other means that there is a substantial probability that the vehicle has a tampered emission control system or would fail for other cause a smog check test as specified in Section 44012.

(ii) The vehicle was previously registered outside this state and is undergoing initial registration in this state.

(iii) The vehicle is being registered as a specially constructed vehicle.

(iv) The vehicle has been selected for testing pursuant to Section 44014.7 or any other provision of this chapter authorizing out-of-cycle testing.

(D) This paragraph does not apply to diesel-powered vehicles.

(5) In addition to the vehicles exempted pursuant to paragraph (4), any motor vehicle or class of motor vehicles exempted pursuant to subdivision (b) of Section 44024.5. It is the intent of the Legislature that the department, pursuant to the authority granted by this paragraph, exempt at least 15 percent of the lowest emitting motor vehicles from the biennial smog check inspection.

(6) All motor vehicles that the department determines would present prohibitive inspection or repair problems.

(7) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(8) (A) All diesel-powered vehicles manufactured prior to the 1998 model-year.

(B) All diesel-powered vehicles that have a gross vehicle weight rating of 8,501 to 10,000 pounds, inclusive, until the department,

in consultation with the state board, pursuant to Section 44012, implements test procedures applicable to these vehicles.

(C) All diesel-powered vehicles that have a gross vehicle weight rating from 10,001 pounds to 13,999 pounds, inclusive, until the state board and the Department of Motor Vehicles determine the best method for identifying these vehicles, and until the department, in consultation with the state board, pursuant to Section 44012, implements test procedures applicable to these vehicles.

(D) All diesel-powered vehicles that have a gross vehicle weight rating of 14,000 pounds or greater.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

(c) For purposes of subdivision (a), a collector motor vehicle, as defined in Section 259 of the Vehicle Code, is exempt from those portions of the test required by subdivision (f) of Section 44012 if the collector motor vehicle meets all of the following criteria:

(1) Submission of proof that the motor vehicle is insured as a collector motor vehicle, as shall be required by regulation of the bureau.

(2) The motor vehicle is at least 35 model-years old.

(3) The motor vehicle complies with the exhaust emissions standards for that motor vehicle's class and model-year as prescribed by the department, and the motor vehicle passes a functional inspection of the fuel cap and a visual inspection for liquid fuel leaks.

(d) This section shall become operative on January 1, 2010.

SEC. 4. Section 44012 of the Health and Safety Code is amended to read:

44012. The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, and shall require, at a minimum, for all vehicles that are not diesel-powered, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas. The department shall ensure all of the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the department, that may include, but are not limited to, on-board diagnostic testing. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

(g) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

(h) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

(i) This section shall remain in effect only until January 1, 2010, and as of that date is repealed.

SEC. 5. Section 44012 is added to the Health and Safety Code, to read:

44012. The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, and shall require, at a minimum, for all vehicles that are not diesel-powered, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas. The department shall ensure all of the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, a visual inspection is made of emission control devices and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the department, that may include, but are not limited to, on-board diagnostic testing. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual

or functional check shall be performed in accordance with procedures prescribed by the department.

(g) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

(h) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

(i) This section shall become operative on January 1, 2010.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2007

Governor